



REGISTRATION NO. 8331 FILED NO. 14

AUG 14 1989 - 11 20 AM

INTERSTATE COMMERCE COMMISSION

FIRST NATIONAL BANK  
OF LOUISVILLE

Post Office Box 36001, Louisville, Kentucky 40245 Telephone (502) 581-4318

August 11, 1989

9-226A017

Ms. Mildred Lee  
c/o Interstate Commerce Commission  
12th & Constitution Ave. N.W.  
Washington, D.C. 20423

Dear Ms. Lee:

As per our telephone conversation, I have enclosed the following:

- (1) One (1) original and one (1) copy of the renewal agreement between First National Bank of Louisville and Amax.
- (2) Copy of the first page of the original lease agreement with the Interstate Commerce Commission's file number 8331 and date May 18, 1976.
- (3) Our check #1690 for \$13.00 filing fee.

If you need more information, please call me at (502) 581-4318. I have enclosed a return envelope for your convenience. Thank you for your prompt attention to this matter.

Sincerely,

FIRST NATIONAL BANK OF LOUISVILLE

*J. Thomas Smith*  
J. Thomas Smith  
Senior Leased Assets Officer

JTS:va:ml

RECEIVED  
AUG 14 1989  
COMM. FILE

**Interstate Commerce Commission**  
Washington, D.C. 20423

8/15/89

OFFICE OF THE SECRETARY

J. Thomas Smith  
First National Bank Of Louisville  
P.O.Box 30000  
Louisville, KY. 40233

Dear:

The enclosed document(s) was recorded pursuant to the  
provisions of Section 11303 of the Interstate Commerce Act,  
49 U.S.C. 11303, on , at ,  
and assigned recordation number(s).

8/14/89

11:20am

8331-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

AUG 14 1989 - 11 20 AM

ADDENDUM TO LEASE

INTERSTATE COMMERCE COMMISSION

THIS ADDENDUM dated as of the 31st day of May, 1989, is to that certain Lease between First National Bank of Louisville, as Lessor, and Amax Coal Company, a Delaware corporation (successor to Amax Coal Company, a division of AMAX Inc.), as Lessee, dated May 12, 1976 (the "Lease").

RECITALS

A. Pursuant to Section #14 of the Lease, the Lessee has the election at the expiration of the initial term of the Lease to renew the Lease.

B. Lessee has notified Lessor that it wished to renew the Lease for a two (2) year period.

C. Lessor agrees to such an arrangement and wishes to set forth in writing the desire of the parties.

NOW, THEREFORE, in consideration of the premises set forth above, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Upon the expiration of the original term of the Lease, Lessor consents to extend the term of the Lease of eight (8) 100-ton rapid discharge coal cars (each such car being hereafter referred to as a "Unit") for a two (2) year period beginning June 1, 1989 and ending May 31, 1991.

2. The rentals for the extended term shall be paid on a semi-annual basis in arrears at the rate of \$2,175.00 per Unit. The rentals will be payable as follows:

<u>Due Date</u>	<u>Rental</u>
November 30, 1989	\$17,400.00
May 31, 1990	17,400.00
November 30, 1990	17,400.00
May 31, 1991	17,400.00

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their respective duly authorized officers as of the day and year first above set forth.

By: J. Thomas Smith  
J. Thomas Smith  
Senior Leased Assets Officer

Marilyn Lou Gardner  
Marilyn Lou Gardner  
Assistant Secretary

By: Wayne E. Gresham  
Wayne E. Gresham  
Vice President

COMMONWEALTH OF KENTUCKY )  
 ) SS:  
COUNTY OF JEFFERSON )

Shirley A. Brown  
Notary Public  
Jefferson County, Kentucky

Enthalpy of the ring:

STATE OF INDIANA

)  
) SS:  
)

COUNTY OF MARION

I, Bobin Coons, a Notary Public in and for said County and State, do hereby certify that Wayne E. Gresham and Marilyn Lou Gardner, personally known to me to be the same persons whose names are respectively subscribed to the foregoing instrument as Vice President and Assistant Secretary of Amax Coal Company, appeared before me this day in person and severally acknowledged that they, being thereunto authorized, signed, sealed with the corporate seal, and delivered the said instrument as the free and voluntary act of said corporation and as their free and voluntary act as such officers thereof.

Given under my hand and Notarial Seal this 27th day of July, 1989.

Bobin Coons  
Notary Public

My Commission Expires:

July 21, 1992

County of Residence:

Hamilton

JRS:dld MISC DISK 07/24/89

BOBIN COONS  
NOTARY PUBLIC STATE OF INDIANA  
HAMILTON COUNTY  
MY COMMISSION EXP. JULY 21, 1992

or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Item of the Equipment;

then at any time after the occurrence and during the continuance of such an Event of Default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of 10-5/8% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

15.2. The Vendor may waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

#### SECTION 16. REMEDIES.

16.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the

Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located without judicial process if this can be done without breach of the peace, and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

16.2. In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad, for a period not exceeding 180 days, until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor as reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

16.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 15.2 hereof), the Vendor (after retaking possession of the Equipment as hereinbefore in this Section 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit (including, if the Vendor so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate

and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, within 30 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this Section 16.3 object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law; or the Vendor, with or without the retaking of possession thereof may, at its election, sell the Equipment, or any Item thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine and as is commercially reasonable; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited to the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use shall be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Section 20 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 16.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine and as is commercially reasonable, provided that the Railroad shall be given written notice of such sale not less than 30 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 30 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad



does not exercise said right to purchase or provide a purchaser for the Equipment, the Vendor may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

16.5. Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

16.6. All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, second to the payment of the indebtedness in respect of the Purchase Price of the Equipment and third to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

16.7. The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

16.8. The foregoing provisions of this Section are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

## SECTION 17. APPLICABLE STATE LAWS.

17.1. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

17.2. Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any Item thereof, and any other requirements as to the time, place and terms of sale thereof, and other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

## SECTION 18. EXTENSION NOT A WAIVER.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

## SECTION 19. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto (or a financing or continuation statement or similar notice thereof if and to the extent permitted or required by applicable law) to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, in such public offices as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

## SECTION 20. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad: Illinois Central Gulf Railroad Company, Two Illinois Center, 233 North Michigan Avenue, Chicago, Illinois 60601, Attention: Treasurer,

(b) to the Vendor: Plasser American Corporation, 2001 Myers Road, Chesapeake, Virginia 23324, Attention: Mr. John Mura,

(c) to the assignee of the Vendor, or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

## SECTION 21. HEADINGS.

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

## SECTION 22. EFFECT AND MODIFICATION OF AGREEMENTS.

Except as otherwise provided in Section 3.1 hereof, in the letter referred to in Schedule B hereto and in the letter agreement referred to in Section 3.8 hereof, this Agreement and the Schedules relating hereto, exclusively and completely state the rights and agreements of the Vendor and the Railroad with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and the Railroad.

## SECTION 23. LAW GOVERNING.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof (or a financing statement or similar notice thereof) shall be filed, recorded or deposited.

SECTION 24. DEFINITIONS.

The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Plasser American Corporation, and any successor or successors for the time being to the properties and business thereof, and, after any such assignment, any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment.

SECTION 25. CONSOLIDATION OR MERGER.

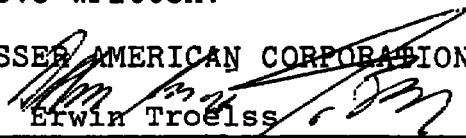
In case of any consolidation or merger to which the Railroad or the Vendor shall be a party, or in case of any sale of all or substantially all the assets of the Railroad or the Vendor, the corporation resulting from such consolidation or merger (if other than the Railroad or the Vendor) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder, not then performed, of the Railroad or the Vendor as the case may be, and shall become entitled to all rights hereunder of the Railroad or the Vendor, as the case may be.

SECTION 26. EXECUTION.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their officers or representatives, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

PLASSER AMERICAN CORPORATION

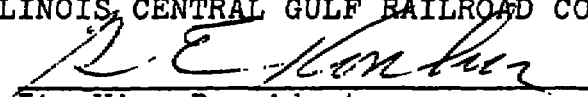
By   
Its Executive Vice President

(Corporate Seal)

Attest:

  
John Mura  
Secretary

ILLINOIS CENTRAL GULF RAILROAD COMPANY

By   
Its Vice President

(Corporate Seal)

Attest:

  
Secretary

STATE OF VIRGINIA     )  
CITY                    ) SS  
~~COUNTY~~ OF Chesapeake)

On this 30th day of April, 1976, before me personally appeared Erwin Troelss, to me personally known, who, being by me duly sworn, says that he is ~~the~~ Exec.V.P. of PLASSER AMERICAN CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

Peggy Jean Matthews

(Seal)

My Commission Expires: February 17, 1980.

STATE OF ILLINOIS     )  
                              ) SS  
COUNTY OF COOK        )

On this 23rd day of April, 1976, before me personally appeared L. E. Kamber to me personally known, who being by me duly sworn, says that he is a Vice President of ILLINOIS CENTRAL GULF RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Judy Byers  
Notary Public

(Seal)

My Commission expires:

NOTARY PUBLIC STATE OF ILL.

MY COMMISSION EXPIRES, FEB. 6 1980

ISSUED THRU ILLINOIS NOTARY ASSOC.

SCHEDULE A-1  
to Conditional Sale Agreement

VENDOR ..... Plasser American Corporation

DESCRIPTION OF EQUIPMENT ..... 1 Ballast Undercutter Cleaner  
bearing identifying number  
ICG 100472

SPECIFICATIONS ..... As set forth in Illinois  
Central Gulf Railroad  
Company Purchase Order  
60-33085 dated January 27,  
1976

BASE PRICE ..... \$700,000 (plus shipping  
charges from New Orleans,  
Louisiana to McComb,  
Mississippi)

MAXIMUM PRICE ..... \$770,000

DELIVER TO ..... Illinois Central Gulf Rail-  
road Company

PLACE OF DELIVERY ..... McComb, Mississippi

ESTIMATED DELIVERY DATES ..... April, 1976 - September, 1976

OUTSIDE DELIVERY DATE ..... October 1, 1976

SCHEDULE A-2  
to Conditional Sale Agreement

VENDOR ..... Plasser American Corporation

DESCRIPTION OF EQUIPMENT ..... 1 Ballast Compactor bearing  
identifying number BRC-100

SPECIFICATIONS ..... As set forth in Illinois  
Central Gulf Railroad  
Company Purchase Order  
60-33086 dated January 27,  
1976

BASE PRICE ..... \$79,200 (plus shipping  
charges from Chesapeake,  
Virginia to McComb, .  
Mississippi)

MAXIMUM PRICE ..... \$82,500

DELIVER TO ..... Illinois Central Gulf Rail-  
road Company

PLACE OF DELIVERY ..... McComb, Mississippi

ESTIMATED DELIVERY DATES ..... April, 1976 - September, 1976

OUTSIDE DELIVERY DATE ..... October 1, 1976



SCHEDULE A-3  
to Conditional Sale Agreement

VENDOR ..... Plasser American Corporation

DESCRIPTION OF EQUIPMENT ..... 2 Switch Tampers bearing  
identifying numbers MT-351  
and MT-352, respectively

SPECIFICATIONS ..... As set forth in Illinois  
Central Gulf Railroad  
Company Purchase Order  
60-33690 (cont) dated  
March 1, 1976

BASE PRICE ..... \$190,000 per Item (\$380,000  
for 2 Items) (plus shipping  
charges from New Orleans,  
Louisiana to McComb,  
Mississippi)

MAXIMUM PRICE ..... \$209,000 per Item (\$418,000  
for 2 Items)

DELIVER TO ..... Illinois Central Gulf  
Railroad Company

PLACE OF DELIVERY ..... McComb, Mississippi

ESTIMATED DELIVERY DATES ..... April, 1976 - September, 1976

OUTSIDE DELIVERY DATE ..... October 1, 1976

## WARRANTIES AND PATENT INDEMNITIES

1. **WARRANTIES:** The Vendor's warranties of material and workmanship shall be as follows:

(a) In the case of the Ballast Undercutter Cleaner described in Schedule A-1 hereto:

Six months warranty against defects in material and workmanship commencing with the date of start-up of operation. Wear parts, such as cutting chain, wear plates, screens, etc., are excluded from this warranty, except for poor design or poor workmanship. Further explanation of this warranty is contained in a letter from the Vendor to the Railroad dated November 21, 1975.

(b) In the case of the Ballast Compactor described in Schedule A-2 hereto:

Six months warranty against defects in material and workmanship commencing with the date of start-up of operation on all parts and components manufactured by Plasser & Theurer. Any parts and components not manufactured by Plasser & Theurer will carry the warranty of the respective manufacturers thereof. A service representative of the Vendor will be with the Ballast Compactor for one to two weeks to break-in such machine and instruct the operators and mechanics of the Railroad.

(c) In the case of the Switch Tampers described in Schedule A-3 hereto:

Six months warranty against defects in material and workmanship commencing with the date of start-up of operation on all parts and components manufactured by Plasser & Theurer. Any parts and components not manufactured by Plasser & Theurer will carry the warranty of the respective manufacturers thereof. A service representative of the Vendor will be with the Switch Tampers for one to two weeks to break-in such machine and instruct the operators and mechanics of the Railroad.

The foregoing warranties are conditional upon operation and maintenance of each Item of Equipment in accordance with Section 9.2 hereof.

SCHEDULE B  
(to Conditional Sale Agreement)

2. PATENT INDEMNITIES: The Vendor agrees to indemnify and hold the Railroad harmless from any charge of patent infringement made by any third party arising from the Railroad's use of the Equipment, and the Vendor shall, at its own expense, defend the Railroad against any such charge of patent infringement. These undertakings of the Vendor are subject to the following conditions:

(a) These undertakings do not extend to modifications or redesigns of the Equipment made by the Railroad or any third party;

(b) The Railroad shall provide the Vendor with prompt notice of any such charge of patent infringement;

(c) The Railroad shall provide full cooperation to the Vendor with respect to any such undertakings;

(d) The Vendor shall be solely responsible for, and have the sole authority over, the conduct of any litigation or other disposition of such claims and

(e) These undertakings of the Vendor are not assignable by the Railroad in connection with any sale of the Equipment to third parties.